

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

PINPOINT MARKETING GROUP, INC.
d/b/a GOLD'S GEAR
Plaintiff,

v.

SUNDESA, LLC; and
RUNWAY BLUE, LLC,
Defendants.

Civil Action No. 3:17-cv-00435

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiff Pinpoint Marketing Group, Inc. d/b/a Gold's Gear ("Pinpoint" or "Plaintiff"), for its Original Complaint against Defendant Sundesa, LLC and Defendant Runway Blue, LLC (collectively "Defendants"), hereby alleges as follows:

NATURE OF THE ACTION

1. This is a declaratory judgment action seeking a determination that Pinpoint's Gold's Gym bottle does not infringe any valid or enforceable claim of U.S. Patent No. D510,235 (the "Patent-in-Suit") (attached hereto as Exhibit 1) under 35 U.S.C. § 271.

2. On information and belief, Sundesa, LLC is the exclusive licensee of the Patent-in-Suit from its assignee Runway Blue, LLC. Sundesa represents that its exclusive license includes the right to enforce the Patent-in-Suit. On information and belief, Runway Blue, LLC is the assignee of the Patent-in-Suit.

THE PARTIES

3. Plaintiff Pinpoint Marketing Group, Inc. is a corporation organized under the laws of the State of Texas with its principal place of business at 3710 West Royal Lane, Suite 125, Irving, TX 75063 within this District.

4. Upon information and belief, Defendant Sundesa, LLC, is a Utah limited liability company with its principal place of business at 250 South 850 East, Lehi, Utah 84043, and can be served through its registered agent Steven M. Sorensen, 250 South 850 East, Lehi, Utah 84043.

5. On information and belief, Defendant Runway Blue, LLC is a Utah limited liability company with its principal place of business at 1953 North 690 East, Orem, Utah, 84097, and can be served through its registered agent Steven M. Sorensen, 35 S Pfeifferhorn Dr., Alpine, UT 84004.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code, and under 28 U.S.C. §§ 2201 and 2202, to obtain a declaration of non-infringement of the Patent-in-Suit.

7. Because this action arises under the Patent Laws of the United States, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long-Arm Statute, due to their substantial business in this forum, including sales of BlenderBottle products and through their patent enforcement actions in this jurisdiction.

9. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

A SUBSTANTIAL CONTROVERSY EXISTS BETWEEN THE PARTIES

10. Pinpoint sells shaker cups under the name of Gold's Gear.

11. On or about December 5, 2016, Pinpoint, through Scott Graham by email, received a letter from Larry R. Laycock on behalf of Sundesa (“the Letter”) (attached hereto as Exhibit 2).

12. The Letter alleges “[f]rom our review of the structure and operation of Your Shaker Cups, it appears that they infringe the Asserted Patent.”

13. The letter further states:

Demand is hereby made for you to immediately stop infringing the Asserted Patent and for you to provide written assurances that you have terminated all manufacture, use, sale, offers for sale, and importation of Your Shaker Cups in the United States. If you wish to resolve this matter outside of litigation, please contact us within twenty-one days from the date of this letter. Otherwise, Sundesa will assume that you intend to continue infringing the Asserted Patent and will pursue all legal remedies available.

14. Pinpoint does not infringe, either directly or indirectly, any valid, enforceable claim of the Patent-in-Suit, either literally or under the doctrine of equivalents.

15. In conversations with Pinpoint’s counsel, Sundesa’s representative denied the accuracy of Pinpoint’s non-infringement position as explained below in paragraphs 18-24.

16. Pinpoint has been harmed by Sundesa’s efforts to interfere with its business of selling Gold’s Gym bottles.

17. By virtue of the foregoing, a substantial controversy exists between the parties that is of sufficient immediacy and reality to warrant declaratory relief.

**COUNT 1: DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE
D510,235 PATENT**

18. Pinpoint realleges and incorporates paragraphs 1 through 17 as if fully set forth in this paragraph.

19. Figure 2 of the D510,235 is reproduced below:

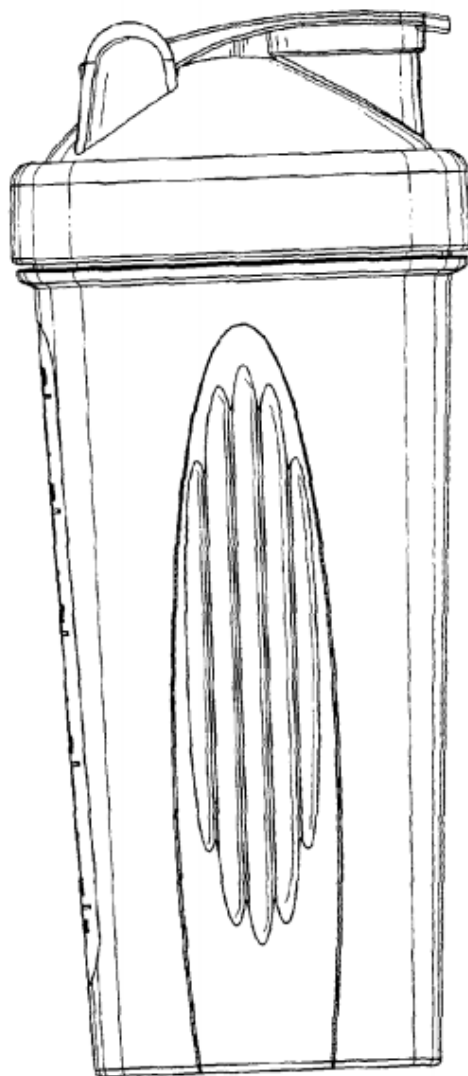


Fig. 2

20. Figure 2 of the Patent-in-Suit shows that the claimed bottle has an inset on the side of the bottle that contains five protrusions.

21. The sides of Pinpoint's Gold Gym bottle are smooth as shown below:



22. The “Pinpoint Marketing Claim Chart” attached to the Letter contains the following comparison:



23. As this comparison shows, the smooth sides of Pinpoint's Gold's Gym bottle do not contain any of the ornamental aspects of the five protrusions within the inset of the claimed bottle.

24. Bottle designs employing something other than five protrusions could be made to accomplish the functional capability of increasing the bottle user's grip.

REQUEST FOR RELIEF

Wherefore, Pinpoint respectfully requests for this Court to grant the following relief:

- a) A declaration that Pinpoint has not infringed, either directly or indirectly, any valid and enforceable claim of U.S. Patent No. D510,235;
- b) An order declaring that Pinpoint is a prevailing party and that this is an exceptional case, awarding Pinpoint its costs, expenses, and reasonable attorney's fees under 35 U.S.C. § 285; and

c) That Pinpoint be granted such other and additional relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Pinpoint demands a trial by jury on all issues presented in this Complaint and so triable.

Dated: February 15, 2017

/s/ Gary R. Sorden

Gary R. Sorden

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